

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

GERALD OSCAR PERSON,

Case No. 3:10-CV-01255-JE

Petitioner,

FINDINGS AND RECOMMENDATION

v.

MR. STEVE FRANKE,

Respondent.

JELDERKS, Magistrate Judge.

Petitioner filed this 28 U.S.C. § 2254 habeas corpus case on October 13, 2010. On November 14, 2011, respondent filed a Response to the Petition in which he argues that the pleading constitutes an improper successive habeas petition without Ninth Circuit permission.

On May 30, 2012, petitioner filed a Motion for Stay and to Hold Case in Abeyance (#27). On August 15, 2012, the court reserved ruling on petitioner's Motion for Stay and to Hold Case in Abeyance (#27) and required him to show cause within 30 days why

his Petition should not be summarily dismissed as successive without Ninth Circuit permission. The court specifically advised petitioner that should he fail to show cause within the time allotted, the court would recommend dismissal of this habeas corpus action.

Petitioner has not responded to the court's August 15, 2012 Order to Show Cause in any way. The court should dismiss the Petition for Writ of Habeas Corpus (#2) as successive without Circuit permission and enter a judgment dismissing this case. The court should also decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

#### **SCHEDULING ORDER**

This Findings and Recommendation will be referred to a district judge. Objections, if any, are due within 17 days. If no objections are filed, then the Findings and Recommendation will go under advisement on that date.

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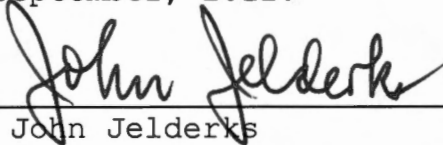
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If objections are filed, then a response is due within 14 days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

DATED this 19 day of September, 2012.

A handwritten signature in black ink, reading "John Jelderks", written over a horizontal line.

John Jelderks  
United States Magistrate Judge